

**Act 47 Building Energy Code Study Committee
Meeting #5**

Department of Public Service, GIGA Conference Room, 112 State Street, Montpelier
and Virtual via Teams
September 12, 2023
9:30 am – 12:00 pm

Committee Members:

Jim Bradley
Christopher Bray
Chris Burns
Chris Company
Scott Campbell
Michael Desrochers
Bob Duncan
Kelly Launder
Matt Musgrave
Craig Peltier
Timothy Perrin
Matt Sharpe
Jason Webster
Collin Frisbie

Participants:

Walter Adams
Liz Bourguet
Andrew Brewer
Ben Civiletti
Ellen Czajkowski
Chris D'Elia
Michael Desrochers
Richard Faesy
Linda Gray
Sarah Copeland Hanzas
Lauren Hibbert
Lauren Layman
Keith Levenson
Barry Murphy
William Nash
Guy Payne
Kevin Rushing
Stu Slote

1. Meeting minutes from last meeting will be approved at a later date
2. Vermont Residential Contractor Registry

Secretary of State, Sarah Copeland Hanzas

Deputy Secretary of State, Lauren Hibbert

Kevin Rushing – Director, Office of Professional Regulation (OPR)

Lauren Layman – General Counsel, OPR

- This is mandatory registration for residential contractors
- There is a \$10,000 threshold (applies to any contract over this threshold)
- Registry requires contractors to have written contract and insurance
- Contractor registry is designed to have no qualifications built into it
 - Qualifications were debated and rejected
 - There was concern about excluding people from their field of work
- There will be an option for voluntary certification
 - Provide consumers with a venue for contractors to list optional approved certifications
- Bob – if I did contracts under \$10k, I would never need to register?
 - Yes, it's designed for larger builder. This exempts the person doing odd jobs
- SOS OPR [Contractors Sunrise report](#) – 2017/8- *“identifies consumer harm occurring within a narrow but significant band of the unregulated market for professional home-improvement and construction services; compares policy responses prevailing in other states; applies Vermont legislative policy on the regulation of professions and occupations articulated at 26 V.S.A. chapter 57 (§§ 3101-3107); and discusses the costs, benefits, and limitations of regulatory options.”*
- Minimum necessary to protect the public
- Third party certification is being developed to add to the registry – would provide education, coursework and pass exam. Take certification, upload to system, people can search for certifications
 - State-sponsored certifications
 - Always from official third party (not self-certify)
 - Not individual certifications
 - Way for public to know that they are hiring someone with expertise
 - They can send certifications that they are considering as part of input process
- Richard- EFG is partnering with SOS on the DOE grant for the state. One of the tasks is to develop a Vermont-specific training with ICC. So having these resources available will align
- A sticking point is always who is verifying the certification? They want clear documentation
- Working with advisory members (Jim Bradley), then going through rulemaking process
 - They would like input in the process
- There could be certifications for building science, energy, roofing
- Matt Sharpe- does the certification sit with the business or individual?
 - Good question- think it would sit with both
 - They are licensing both individuals and businesses
 - There needs to be one licensee per business, they are good as long as someone is working under the one who is registered. Business is then liable

- Applies specifically to residential contractors. The intent was to reduce harm for residential homeowners who enter into small contracts
- They do not provide restitution and don't order remediation. But they can condition, restrict, or suspend a license to protect the next homeowner
- Started April 1, 2023. Open December of last year. Enforced April 1, 2024. The enforcement team has discretion so they can work to get people registered
- They have conducted outreach to get the word out about the registry
 - Emails, posters, website, radio and newspaper ads, stakeholder presentations
 - Collaborating with advisors, Vermont Consumer Assistance Program, professional associations
- Chris C- are people being told about the registry in relation to the flood and future disasters?
 - Yes – also working with the governor to issue executive order. Creates emergency registration for out-of-state contractors helping with the flood remediation
 - Registration for out of state contractors will be mandatory next year to be registered
- Bi-annual renewal
 - The fee is \$250 (for businesses, less for individuals) starting next year. It is \$125 right now
- What are they doing to get word out to the public about registry?
 - Most people probably don't even know about OPR. They are focused on trying to get word out, including paid advertisements
 - Need help with outreach to both public/ homeowners and to contractors
 - They have posters they are giving out
 - Want to do Front Porch Forum but it is more expensive. They don't have a large budget for outreach
- OPR's role
 - Provide information to the public concerning registration, certification, appeal procedures, complaint procedures
 - Receive applications for registration or certification; issue registrations and certifications; deny or renew registrations and certifications
 - Prepare and maintain a registry of registrants and certificants
 - Use registry to communicate with registrants and certificants
 - Administer fees
- Right now, there are 481 businesses and 286 individuals (767 total) registered
- 9 complaints so far
 - No fraud case yet. This is not to enforce a standard of workmanship
 - Would have needed expansion of resources to do building inspections
- Looking forward:
 - Working on a draft of contractor certifications to post on the registry. Hopefully a draft this winter
 - Rulemaking process – public hearings on rules. Then ICAR (interagency committee on administrative rules), who makes sure that rules are swimming in the same direction. Then public feedback into rule. Then the rule is filed. Then LCAR can sign off. Then final rule is filed with SOS

- Jim – contractors can provide assistance and resources. Public awareness is crucial and is going to be a heavy lift
- Once you're issued a credential, it's yours forever
- Chris Bray – could the contract template OPR provides include language around following energy code?
 - Jim – it doesn't currently. But it's national. Could be modified to VT standards including RBES
- Applies to only buildings with 1-4 units(HUD definition of multifamily buildings is 5+ units)
- Only prime contractor has to be registered. If you are subcontractor, don't need to be registered
- Certifications are all voluntary. This was debated. There would need to be statutory change and budget/staff to require certifications
- In the debates, did "protecting the public" come up? Asking this question in relation to protecting public from climate change
 - Yes, this was debated. But that wasn't how the bill was written
 - They were given some space for certifications. This would allow the public to select a contractor who is certified. They are mandated to create a set of certifications (could be climate-focused, all voluntary)
- Matt Sharpe – would there be resistance to adding something "all codes and standards are followed"?
 - This would be up to the legislature
- Jason- not registered yet on the registry. He is trying to register right now, but having trouble
 - Reach out to SOS office
 - There are resources for application instructions
- Voluntary certifications will not be a huge differentiator with builders
 - Public protection is the primary focus using written contracts and insurance
 - Registration will be mandatory over \$10k
- Professional liability insurance is required
- Question - If I'm my own contractor, with a subcontractor working for me, do they have to register (if I'm the homeowner)? Yes, if you are contracting with someone, and the contract is for more than \$10k, they would have to be registered
- Subcontractors generally are not more than \$10k, this seems like a gap
 - It is a matter of who the homeowner is relying on. It is the person who is overseeing the subcontractors
- If you are a licensed trade (e.g., electrician, HVAC, etc.), you don't have to register
- Jason – things are different in Massachusetts and New York and New Hampshire, where building permits are required for construction. The contract has to be pulled by a licensed contractor. Every person is working under a general contractor's permit. So, when they work in Massachusetts, they are working under local general contractor. They will require them to send insurance. It is simple because they have the structure in place
 - State has skipped putting in the system but also wants contractor registered
 - Massachusetts has town-issued permit but the state has created the process (of building codes, etc). Towns have option to adopt stretch code but the process is the same
 - New Hampshire is a hybrid system. If a town doesn't want to administer, then the state administers

- Mike D – In Vermont when the state assigns code oversight authority to a municipality, they take all of the associated permit fees and the state doesn't get them. DFS is funded only with permit fees. So, the DPS would be surrendering permit fees when delegating code responsibility to a municipality, which would be an issue for the DPS' budget.
 - Jason – Massachusetts agency probably has their own budget to oversee and administer code
 - How much revenue does DFS loses to municipalities?
 - Mike – well over \$1 million. They have MOUs with Burlington, S Burlington, Hartford, Montpelier
 - OPR – do not have continuing education built into statute for home contractors
3. Comments – Bob Duncan (AIA VT) & Collin Frisbee (HBRA)
- AIA VT – circulated a handout with draft of changes
 - Bob – AIA VT proposes all code authority under one jurisdiction
 - Collin –he is advocating for one authority in charge of the issue
 - Worried about changes in the energy code from traditional/standard building practices
We need “scaffolding” to protect Vermonters if we don't follow the standard
 - VT Digger article – was it flawed code or flawed execution that led to the failures?
 - Matt Sharpe – most of the failures he sees are more failure to follow building code, not energy code. One issue was unvented roofs (which is covered in the building code, not so much in energy code)
 - We are lacking builder licensing or statewide code system, we are not getting to the root of the problems
 - Jim- in regard to foam insulation and the VT Digger article, this was a failure of building science
 - They went out to a house built by a trade school eight years ago that is rotting, explains what went wrong, which was a failure to understand building science
 - There will be a lot of houses that they will find with these issues
 - As code continues to increase without oversight and education, these issues will keep getting worse
 - Jason –there is section in current code that builder is responsible for a certain duration of time to bring home to code. A recommendation to legislature: remove this provision when no one has given them the proper tools or oversight to implement the code correctly
 - Matt Sharpe (via chat) - I just want to reiterate - the energy code does not have the details in it that the building code (IRC) does in regards to flashing windows, unvented ceilings, etc. etc. and other factors that generally lead to these larger failures
 - Jason (via chat) - Yes, Matt. No other state has an energy code without a building code.
4. Legislative Report Outline Review
- Richard – we're looking for feedback on the report outline. We will send another version out to committee for feedback
 - Kelly – concerned about too much information in the report outline. Information should be succinct
 - Chris Bray – could move a lot of information to appendix of report

- Bob – suggests a pre-amble. It would be helpful for the legislature to understand what exists for rules right now (like there is no residential building code in Vermont)

5. Strategies to Increase Awareness of and Compliance with the RBES and CBES

Scott reviews some strategies:

- Looking to find areas of agreement for consideration:
 - i. Recognize that energy code is mandatory now.
 - ii. Use easily available avenues to raise awareness in industry and with consumers
 - iii. Add minimally invasive requirements to increase awareness.
 - iv. Improve bureaucratic supports.
 - v. Increase close support of builders.
 - vi. Current practice is not rational for the long term.
 - vii. Coordinate with EFG and the DOE grant in support of the Vermont Energy Code Administration Project to develop and implement a longer-term plan.
- Craig – there are core things that need to be prioritized. For example, key elements of building science
- Collin – encouraged that we are stating that current practice is not working. It's now affecting buildings and builders
- Bob – good outline, would make #6 the first on the list
- Chris C – important to set context. Involvement with municipalities is important. Zoning doesn't exist in every town
- Jason – agree that #6 should be put on top. This is the root of the problem
- Mike D – we don't have contractor knowledge base to build to IRC. In order to prepare construction documents, you'll have to change 26 VSA. There would be a lot to consider if we adopted the IRC

6. Public comments

- Linda Gray – Norwich, town energy committee. She wants to caution about town's capacity to oversee codes. She's part of a group of six towns which share an energy coordinator. They have a proposal: Right now, there are three methods of building certification (two are self-certification and a third is HERS raters). The proposal is allow towns to restrict compliance to just third party HERS raters
 - Suggests a phase- in approach so as to not overwhelm
- Guy Payne – Sustainable Energy Outreach Network (SEON)
 - Voluntary certification doesn't work. We need a stronger incentive for builders, general contractors, carpenters
- Next meeting is Meeting #6 on 10/5/23
- There is a 7th tentative meeting on 10/31/23 and we anticipate that we will be needing this